

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

D'ANNUNZIO ROMAN GAVIOLA
PATRON,

Plaintiff,

v.

LEWY HUGH, et al.,

Defendants.

No. 1:24-cv-00655-JLT-SAB (PC)

ORDER DENYING PLAINTIFF'S MOTION
FOR APPOINTMENT OF COUNSEL,
WITHOUT PREJUDICE

(ECF No. 18)

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's motion for appointment of counsel, filed November 5, 2024. (ECF No. 18.) Plaintiff seeks appointment of counsel because of his imprisonment, lack of access to law library, limited knowledge of the law, and a trial will likely involve conflicting testimony. (Id.)

Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional

1 circumstances the court may request the voluntary assistance of counsel pursuant to section
2 1915(e)(1). Rand, 113 F.3d at 1525.

3 Without a reasonable method of securing and compensating counsel, the court will seek
4 volunteer counsel only in the most serious and exceptional cases. In determining whether
5 “exceptional circumstances exist, the district court must evaluate both the likelihood of success
6 on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
7 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

8 In the present case, the Court does not find the required exceptional circumstances. Even
9 if it assumed that Plaintiff is not well versed in the law and that he has made serious allegations
10 which, if proved, would entitle him to relief, his case is not exceptional. The Court is faced with
11 similar cases almost daily. While the Court recognizes that Plaintiff is at a disadvantage due to
12 his pro se status and his incarceration, the test is not whether Plaintiff would benefit from the
13 appointment of counsel. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most
14 actions require development of further facts during litigation and a pro se litigant will seldom be
15 in a position to investigate easily the facts necessary to support the case.”) The test is whether
16 exception circumstances exist and here, they do not. Although the Court has found that Plaintiff’s
17 complaint states cognizable claims, at this juncture, the Court cannot determine the likelihood of
18 success on the merits of Plaintiff’s claims. The likelihood of success on the merits determination
19 is not the same as that required at screening. Further, a review of the docket reflects that Plaintiff
20 has adequately litigated this action to date. Accordingly, Plaintiff’s motion for the appointment
21 of counsel is denied, without prejudice.

22 IT IS SO ORDERED.

23 Dated: November 6, 2024

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25 UNITED STATES MAGISTRATE JUDGE
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